

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WORCESTER DIVISION

UNITED STATES OF AMERICA

v.

Crim. Case No. 4:03-CR-40008-NMG

FRANCISCO J. VAZQUEZ, et al.
80398-038
FCI McKean
PO Box 8000
Bradford, PA 16701-0980

05-40060 NMG

MOTION TO VACATE UNDER 28 U.S.C. § 2255

1. Name and location of court which entered the judgment of conviction under attack: United States District Court for the District of Massachusetts, Worcester Division.
2. Date of judgment of conviction: April 1, 2004.
3. Length of sentence: 151 months.
4. Nature of offense involved (all counts): 18 U.S.C. § 1512(a)(2)
(A)--(Tampering with a Witness); 18 U.S.C. § 1512(a)(2)(C)--
(Tampering with a Witness); 18 U.S.C. § 1512(b)(1)--(Tampering
with a Witness); 18 U.S.C. § 371--(Conspiracy); and 18 U.S.C. §
2--(Aiding and Abetting).
5. What was your plea? (Check one)
(a) Not guilty
(b) Guilty X
(c) Nolo Contendere
6. Kind of Trial: (Check one)
(a) Jury
(b) Judge only
(c) Not Applicable X
7. Did you testify at the trial?
Yes No Not Applicable X
8. Did you appeal from the judgment of conviction?
Yes No X

9. If you did appeal, answer the following:

(a) Name of court: Not Applicable.

(b) Result: Not Applicable.

(c) Date of Result: Not Applicable.

10. Other than a direct appeal for a judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

Not Applicable.

12. State concisely every ground on which you claim that you are being held in violation of the Constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground.

A. Ground One: The grand jury's indictment is jurisdictionally defective in that it fails to charge an offense, because it fails to charge an essential element of each of these counts:
Supporting facts (state briefly without citing cases or law):

Count One fails to charge an essential element necessary to convey federal jurisdiction under 18 U.S.C. § 1512(a)(2) (A)--(Tampering with a Witness)--namely, that the "official proceeding" was a FEDERAL grand jury proceeding, as opposed to simply "a grand jury proceeding" as alleged.

Count Two fails to charge an essential element necessary to convey federal jurisdiction under 18 U.S.C. § 1512(a)(2) (c)--(Tampering with a Witness)--namely, that the alleged "law enforcement officer" was a FEDERAL agent as opposed to a state or local law enforcement officer.

Count Four fails to allege that the "official proceeding" was FEDERAL in nature, or that the "law enforcement officer"

was a FEDERAL agent, or that the "criminal proceeding" was
a FEDERAL criminal proceeding.

13. If any of the grounds listed in 12 were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

Ground One was not previously presented due to ineffective
assistance of counsel.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: Roger A. Cox, Esq., Cox & Cox At-
torneys at Law, 30 Main Street, Ashland, MA 01721-1178.

(b) At arraignment and plea: Same as above.

(c) At sentencing: Same as above.

(d) On appeal: Not Applicable.

(e) In any post-conviction proceeding: Pro se.

(f) On appeal from any adverse ruling in a post-conviction proceeding: Not Applicable.

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

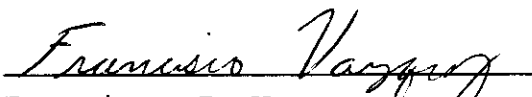
17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

WHEREFORE, Movant prays that the Court grant him all relief to which he may be entitled to in this proceeding.

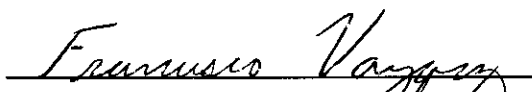
I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 31 day of March, 2005.


Francisco J. Vazquez, pro se
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FCI McKean
PO Box 8000
Bradford, PA 16701-0980

INVOCATION OF THE MAIL-BOX RULE

I declare under penalty of perjury that three true-and-correct copies of the foregoing Motion to Vacate were mailed to this court via first-class mail postage prepaid by depositing the same into the legal-mail box here at FCI McKean, Pennsylvania on this 31 day of March, 2005.


Francisco J. Vazquez, pro se